

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA

C.M.A.No.1640 of 2008

1.Kamala
2.Chandra

.. Appellants/
Plaintiffs

Vs

1. Krishnan
2. Nagendran
3. Periyasami
4. Athayammal
5. Sarasu
6. Selvi
7. Sakthivel
8. Mallika
9. Kanagavel
10.Saradha
11.Varadharaj
12.Nagaraj
13.Rani

.. Respondents/
Defacto

Prayer :

Civil Miscellaneous Appeal is filed under Order 43 Rule 1(u) of the Civil Procedure Code against the judgment and decree of the learned Subordinate Judge of Attur in A.S.No.36/1998, dated 29.04.2005 in dismissing the appeal and remanding the suit in O.S.No.426 of 1990, dated 08.07.1998, on the file of the District Musnif Court, Attur, for trial.

For Appellant : No Appearance

For R1 to R3 : Mr.R.Krishnaswamy
for Mr.P.K.Mohanlal

For R5 to R7 : Ms.Zeenath Begam

For R4, 8 to 13 : Exparte before the lower Court

JUDGMENT

This appeal is directed against the judgment and decree dated 29.04.2005, passed in A.S.No.36 of 1998, by the learned Subordinate Judge, Attur, remanding the back to the learned District Munsif Court, Attur, for conducting fresh trial in O.S.No.426 of 1990.

2. When the matter is taken up today, learned counsel appearing for the respondents 1 to 3 submitted that the impugned judgment and decree passed by the learned Court below is only a remission order and therefore, since no one is appearing for the appellants from the year 2017 onwards, a direction may be given to the learned trial Court to dispose of the suit at the earliest as the suit is of the year 1990.

3. It is seen from the records that on 06.10.2017, it was submitted by the learned counsel for the appellants that he has given change of vakalat in the year 2014 itself and therefore, the Registry was directed to print name of the learned counsel appearing on behalf of the appellants. Again, when the matter was taken up on 25.10.2017, no one has represented for the appellants and therefore, this Court ordered a fresh notice to the appellants. When the said notice was sent to both the appellants, the same was returned with an endorsement "1st appellant died and no such person is available in the name of 2nd appellant."

4. In view of the above, since no one is representing on behalf of the appellants, the Civil Miscellaneous Appeal is dismissed for non-prosecution. However, as the suit is of the year 1990, the learned trial Court is directed to dispose of the suit on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this judgment. No Costs. M.P.No.1 of 2008 is closed.

सत्यमेव जयते
Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rkm

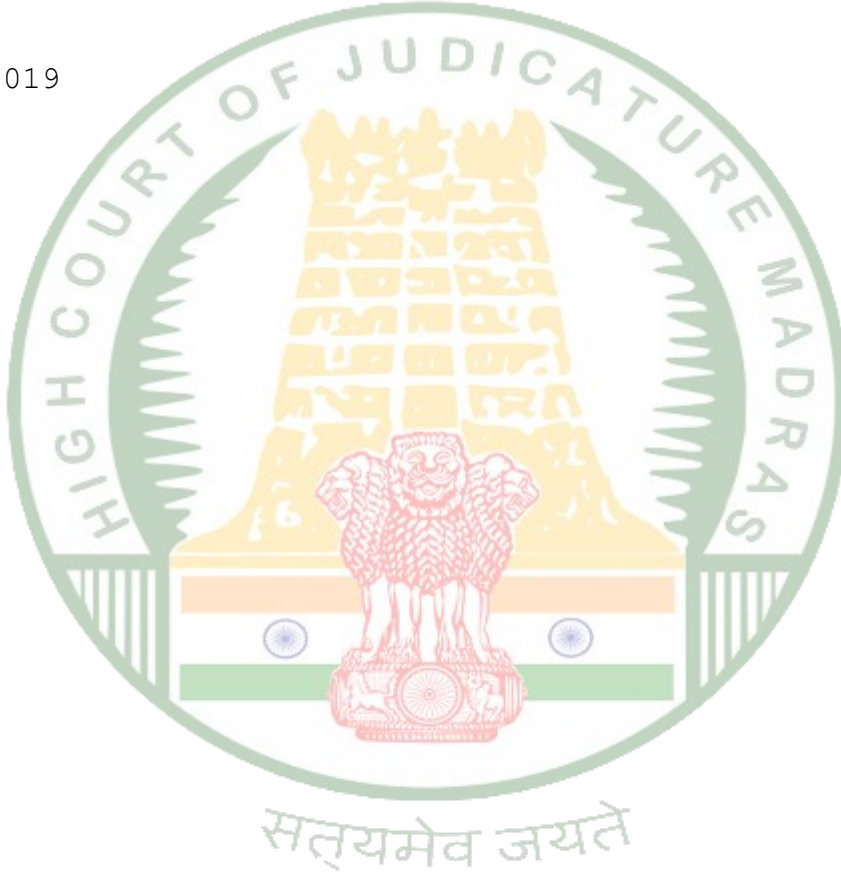
To

1. The Subordinate Judge,
Attur.
2. The District Munsif,
Attur.

+1cc to Ms.Zeenath Begam, Advocate, S.R.No.65741
+1cc to Mr.P.K.Mohanlal, Advocate, S.R.No.65058

C.M.A.No.1640 of 2008

KK (CO)
CS/18/09/2019



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